

Dear FCC:

[This version replaces the version posted early 6 December.]

Your goals need to be consonant with the framework of our society. Progress has made some business models obsolete, and artificially prolonging them is causing enormous damage, both psychic and material.

#### Copyright Locks

Possession is in effect consigned to the distributor, further shifting the calamitous unbalance between the creators of copyrighted material and large distributors. Some seek to create a ``content industry'', where misapplication of copyright will underpin a business plan based on ransom of overly-broad-but-applied-selectively-to-influential-corporations copyrighted materials, rather than on payment for use or for material copies of work. That is, a model based on access controls rather than on rewards for creation.

Bear in mind that the Constitution (Article I, Section 8) grants Congress the power only to grant copyright to the creator, not to subsidiary entities. U.S. copyright exists only for the promotion of progress; any profit to be gained is secondary to that purpose and is not guaranteeable by the government or society.

#### Copyright Ownership is transient

All protection schemes must include the capability of copyright transfer and protect the interests of the future holders of the copyright. A lock that cannot be lifted on command, or for which the ``key'' cannot be found or administered by outside (proper) parties fails this test, thus seriously infringing the copyright of the later holder. If I buy a book or recording, I am buying an object whose copyright is headed toward public domain.

#### Privacy

One of the fundamental properties of books, recordings, broadcast media, newspapers and other objects upon which expressions of thought are fixed in a tangible form is that perusal of the object, and usually its purchase, can be done privately.

No `copyright management' scheme should force either the identification of the owner (or viewer) or of what contents are being viewed/accessed except with the explicit, voluntary, revocable, severable consent of an informed adult.

Any proposed delivery system that can track the identity of the user or the payer (without the usual legal safeguards), so that a private or governmental entity can claim to infer interests or predilections without the consent of the consumer is UNACCEPTABLE. Any ``solution'' that does not allow parity of access through anonymous means, is UNACCEPTABLE.

Copyright is not a right. Copyright is not a means to acquire marketing information.

This proposal is best thought about in terms of principle and future extensions, rather than in terms of some particular device or application.

Michael E. Smith, MESmith@panix.com

General Manager

On behalf of LXNY - New York's Free Computing Organization

[www.lxny.org](http://www.lxny.org)

See also the LXNY submission to the FCC on Docket No. 00-67

LXNY submission about copyright DMCA:

[www.ntia.doc.gov/ntiahome/occ/dmca2000/LXNY.html](http://www.ntia.doc.gov/ntiahome/occ/dmca2000/LXNY.html) and at

[www.loc.gov/copyright/reports/studies/dmca/comments/Init025.pdf](http://www.loc.gov/copyright/reports/studies/dmca/comments/Init025.pdf)